

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL NO. 1:CR-03-251-05

v.

MICHAEL MCKINNON

MEMORANDUM

Before the court is Defendant's motion to hold in abeyance his restitution order and to amend the judgment and conviction to comply with *United States v. Corley*, 500 F.3d 210 (3d Cir. 2007), which requires the sentencing court to set the manner and schedule of restitution payments during Defendant's imprisonment. In support of his request that his restitution payments be held in abeyance during his incarceration, Defendant offers the following reasons: (1) he is now incarcerated at the Federal Medical Center in Springfield, Missouri ("FMC Springfield") and is undergoing kidney dialysis; (2) he is unable to work; (3) he has insufficient income to make payments under the Inmate Financial Responsibility Program ("IFRP"); and (4) the payments he receives from outside sources are needed to provide healthful foods to better his condition.

Contact has been made with FMC Springfield and the court has received the following information: (1) defendant is not on dialysis; (2) he is listed as regular duty status which means he can work but will not be forced to work; (3) in the last six months, Defendant has received from outside sources approximately \$788.00 and, since March 2009, he has received \$220.00;

(4) the institution has two full-time dieticians on staff to monitor Defendant's diet; and (5) the food being purchased with outside money is deemed to be "junk food," i.e. doughnuts, chips and similar snack foods, chocolates, etc.

Defendant is only required to pay \$25.00 per quarter to his IFRP. He is able to do this. Therefore, Defendant's request to hold in abeyance payments toward his fine, special assessment and restitution while incarcerated will be denied.

Defendant's request to amend his judgment and of conviction to conform to *United States v. Corley*, 500 F.3d at 210, to amend his judgment and conviction will be granted as follows:

A lump sum payment of \$2,300.00 is due immediately and is payable as follows:

1) While incarcerated, Defendant shall pay \$25.00 per quarter through the Inmate Financial Responsibility Program toward his fine, special assessment and restitution.

2) Upon release from incarceration, Defendant shall pay \$25.00 per month towards the unpaid balance of the fine, special assessment and restitution as a condition of supervised release.

An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: April 21, 2009.

4) All other portions of the December 6, 2005 Judgment and Conviction remain unchanged.

s/Sylvia H. Rambo
United States District Judge

Dated: April 21, 2009.